

## REMARKS

### A. Background

Claims 1, 3, and 5-20 were pending. Claims 1, 3, and 5-20 were rejected in view of cited art. Applicants respectfully request reconsideration in view of the following remarks. Applicants respectfully submit that the amendments to the claims are supported specification and claims as originally filed and no new matter is being added.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any is consistent with the Examiner's understanding.

### B. Rejection Under 35 U.S.C. 102(b)

Claims 1, 3, 5, 8, 11, 12-16 and 19 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,957,937 to Yoon (*Yoon*). As indicated in the Office Action, *Yoon* is cited as teaching "a shaft extending distally from a distal end of the housing (when the housing is closed by the shaft or sleeve 1096; See col. 7, lines 25-47); a needle 156 (fig 70 movable within the shaft and with respect to the housing)" (Office Action Page 2). Applicants respectfully traverse.

As illustrated in Figure 1 of *Yoon*, the suturing instrument

includes a hub or ***housing 12***, a handle 14 coupled with a ***proximal end*** of the housing, an outer tubular member 16 extending ***distally from the housing***, an inner tubular member 18 disposed in the outer tubular member with a small radial clearance to define an annular space 20 therebetween, and a ***needle holder 22*** movably disposed in the annular space between the inner tubular member and the outer tubular member. (Col. 5, ll. 1-9)(emphasis added)

The needle holder is disposed at the distal end of the suturing instrument. The "[n]eedle holder 22 includes a pair of cooperating needle holding members, defining a needle holding portion" (Col. 6, ll. 22-23). These needle holding members are illustrated as being "a pair of pivotably opposed jaws" with the jaws being "preferably formed at the ***distal end of an elongate***

*rod 84*" (Col. 6, ll. 29-34)(Emphasis added). These jaws are closed to retain a needle during use of the suturing instrument. For instance,

The body of needle 156 is . . . placed between grasping surfaces 86 and 88 of the needle driver with the body of the needle being oriented transverse to the longitudinal axis of the distal portion of the needle holder and, preferably, coaxial with the axis of rotation of the needle holder. With needle 156 positioned within jaws 80 and 82 of needle holder 22, push button 112 is depressed . . . so that the tongues can move together under the influence of bias member 108. Movement of tongue 100 towards tongue 102 ***causes distal end 98 of sleeve 96 to move distally relative to rod 84 and into camming contact with jaws 80 and 82, causing the jaws to move toward one another and into gripping contact with the body of needle 156 as shown in FIG. 8.*** (Col. 9, ll. 25-39)(emphasis added)

The "housing", i.e. jaws, of *Yoon* are disposed at a distal end of the suturing instrument. The "shaft", i.e. sleeve, does not extend "distally from a distal end of the housing" as claimed in independent claims 1 and 12. The "shaft" extends from the housing 10 toward the "needle holder". Even when the "housing" is closed by the shaft or sleeve, movement of the tongues within the housing "causes distal end 98 of sleeve 96 to move distally relative to rod 84 and into camming contact with jaws 80 and 82, causing the jaws to move toward one another and into gripping contact with the body of needle 156 as shown in FIG. 8" (Col. 9, 35-39). Distal translation of the "shaft" is limited because the needle 156 is "orientated transverse to the longitudinal axis of the distal portion" *Id.* As such, the "shaft" of *Yoon* fails to extend "distally from a distal end of the housing" as claimed in independent claims 1 and 12.

In addition to the above, *Yoon* neither teaches nor suggests "a needle movable within the shaft and with respect to the housing" or "a needle extending from the needle actuation handle, through the housing and further through the shaft" of independent claims 1 and 12, respectively. Since the needle 156 is securely held by the jaws and "orientated transverse to the longitudinal axis of the distal portion", the needle would be prevented from entering the "shaft". If the needle is unable to enter the shaft, the needle would be unable to be "movable within the shaft" or "extending . . . through the shaft." Thus, the structure of *Yoon* precludes the needle from being "movable within the shaft and with respect to the housing" or "extending from the needle actuation handle, through the housing and further through the shaft" as recited in independent claims 1 and 12, respectively.

Consequently, Applicants respectfully submit that *Yoon* does not teach or suggest the invention claimed in independent claims 1 and 12. Since rejected claims 3, 5, 8, 11, 13-16, and 19 depend, respectively, from independent claims 1 and 12, for the same reasons as above, dependent claims 3, 5, 8, 11, 13-16, and 19 are allowable.

C. Rejection Under 35 U.S.C. 103

Claims 6-7, 9-10, 17-18 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Yoon*, as applied to claims 1 and 12 above, in view of U.S. Patent No. RE 22,857 to Ogburn (*Ogburn*). For at least the reason stated above with respect to *Yoon* and independent claims 1 and 12, Applicants respectfully submit claims 6-7, 9-10, 17-18 and 20 are allowable because they depend from and therefore include all of the limitations of the allowable independent base claim from which they depend.

D. Conclusion

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 21st day of November, 2006.

Respectfully submitted,

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